

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOARING HELMET CORPORATION, a
Washington corporation,

Plaintiff,

v.

NANAL, INC., d/b/a LEATHERUP.COM, a
Nevada corporation, and GOOGLE INC., a
Delaware corporation,

Defendants.

No. C09-789-JLR

ANSWER OF DEFENDANT NANAL,
INC. TO PLAINTIFF'S FIRST
AMENDED COMPLAINT

Defendant Nanal, Inc. d/b/a Leatherup.com ("Defendant" or "Nanal") answers and otherwise defends as follows:

1.1 Admits that Nanal and Defendant Google Inc. ("Google") are Defendants in this action and otherwise denies the allegations of paragraph 1.1.

1.2 Admits that Plaintiff Soaring Helmet Corporation ("Plaintiff" or "Soaring Helmet") asserts that it is entitled to injunctive and monetary relief in this action under Federal and Washington law and otherwise denies the allegations of paragraph 1.2.

2.1 Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2.1, and on that basis denies such allegations.

2.2 Admits that Nanal is a Nevada corporation, does business as Leatherup.com, offers certain products for use by motorcyclists via its website and by telephone and denies any remaining allegations of paragraph 2.2.

ANSWER OF DEFENDANT NANAL, INC. TO
FIRST AMENDED COMPLAINT (C09-789-JLR) - 1

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1 2.3 Admits that Google offers Internet search engine services via a website, and lacks
2 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
3 of paragraph 2.3 and on that basis denies such allegations.

4 3.1 Admits that the Court has original subject matter jurisdiction of Plaintiff's
5 trademark infringement and unfair competition claims arising under the Lanham Act and denies
6 any remaining allegations of paragraph 3.1.

7 3.2 Admits that the Court has supplemental jurisdiction of Plaintiff's Washington
8 state law claims and denies any remaining allegations of paragraph 3.2.

9 3.3 Denies that venue is proper under 28 U.S.C. § 1391(b)(1) or (2), denies that Nanal
10 may be found in this district and lacks knowledge or information sufficient to form a belief as to
11 whether Google may be found in this district, and on that basis denies that venue is proper in this
12 district.

13 3.4 Lacks knowledge or information sufficient to form a belief as to whether the
14 Court has personal jurisdiction over Google and on that basis denies, and denies that the Court
15 has personal jurisdiction over Nanal.

16 4.1 Lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations of paragraph 4.1, and on that basis denies such allegations.

18 4.2 Lacks knowledge or information sufficient to form a belief as to the truth of the
19 allegations of paragraph 4.2, and on that basis denies such allegations.

20 4.3 Lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations of paragraph 4.3, and on that basis denies such allegations.

22 4.4 Admits that Google operates an Internet search engine through which users can
23 use terms to search for websites offering products and services, and lacks knowledge or
24 information sufficient to form a belief as to the truth of the remaining allegations of paragraph
25 4.4, and on that basis denies such allegations.

26 4.5 Admits that Google sells advertising to appear as "Sponsored Links" next to
27 user's search results, admits that advertisers can select keywords that prospective customers may
28

1 use in conducting their searches, admits that Nanal has participated in Google's AdWords
2 Program and denies the remaining allegations of paragraph 4.5.

3 4.6 Lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations of paragraph 4.6 and on that basis denies such allegations.

5 4.7 Admits that Nanal does not sell VEGA helmets and denies the remaining
6 allegations of paragraph 4.7.

7 4.8 Lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations of paragraph 4.8, and on that basis denies such allegations.

9 4.9 Admits that Soaring Helmet sent a letter to Nanal a copy of which is Exhibit C to
10 the Amended Complaint, states that the letter speaks for itself, lacks knowledge or information
11 sufficient to form a belief as to whether Plaintiff sent a cease and desist letter to Google and on
12 that basis denies such allegations and denies any remaining allegations of paragraph 4.9

13 4.10 Lacks knowledge of information sufficient to form a belief as to the truth of the
14 allegation that Google agreed to remove reference to VEGA, admits that Nanal does not sell
15 VEGA helmets and denies the remaining allegations of paragraph 4.10.

16 5.1 Nanal realleges and incorporates by reference its responses to the allegations of
17 paragraphs 1.1 through 4.10 as if fully set forth herein.

18 5.2 Lacks knowledge or information sufficient to form a belief as to the truth of the
19 allegations of paragraph 5.2, and on that basis denies such allegations.

20 5.3 Denies.

21 5.4 Lacks knowledge or information sufficient to form a belief as to the truth of the
22 allegations of paragraph 5.4, and on that basis denies such allegations.

23 5.5 Denies.

24 5.6 Lacks knowledge or information sufficient to form a belief as to the value of
25 Soaring Helmet's alleged goodwill, and on that basis denies such allegations, and denies the
26 remaining allegations of paragraph 5.6.

27 5.7 Admits that Plaintiff did not give Nanal consent, denies that any consent was
28 required and denies the remaining allegations of paragraph 5.7.

1 5.8 Denies.

2 5.9 Denies.

3 5.10 Denies.

4 5.11 Admits that Plaintiff seeks treble damages and attorneys' fees and denies the

5 remaining allegations of paragraph 5.11

6 5.12 Denies.

7 5.13 Denies.

8 5.14 Denies.

9 6.1 Nanal realleges and incorporates by reference its responses to the allegations of

10 paragraphs 1.1 through 5.14 as if fully set forth herein.

11 6.2 Denies.

12 6.3 Denies.

13 6.4 Denies.

14 6.5 Denies.

15 6.6 Denies.

16 6.7 Denies.

17 6.8 Denies.

18 6.9 Denies.

19 7.1 Nanal realleges and incorporates by reference its responses to the allegations of

20 paragraphs 1.1 through 6.9 as if fully set forth herein.

21 7.2 Denies.

22 7.3 Denies.

23 7.4 Denies.

24 7.5 Denies.

25 7.6 Denies.

26 7.7 Admits that Soaring Helmet seeks damages, costs and attorneys' fees and denies

27 the remaining allegations of paragraph 7.7.

28

1 7.8 Admits that Soaring Helmet seeks treble damages and denies the remaining
2 allegations of paragraph 7.8.

3 8.1 Nanal realleges and incorporates by reference its responses to the allegations of
4 paragraphs 1.1 through 7.8 as if fully set forth herein.

5 8.2 Denies.

6 8.3 Denies.

7 8.4 Denies.

8 8.5 Denies.

9 8.6 Denies.

10 **PLAINTIFF'S PURPORTED PRAYER FOR RELIEF**

11 8.7 Defendant avers that the WHEREFORE paragraphs 1-6, which appear after
12 paragraph 8.6 of the Amended Complaint, do not contain any allegations that require a response.
13 To the extent, if any, that such paragraphs include any allegations requiring a response,
14 Defendant denies them.

15 **DEFENSES AND AFFIRMATIVE DEFENSES**

16 As and for its separate defenses and affirmative defenses to Plaintiff's Amended
17 Complaint, Defendant asserts the following:

18 1. The Amended Complaint, or one or more of the claims set forth therein, fails to
19 state a claim upon which relief can be granted.

20 2. Plaintiff's claims are barred, in whole or in part, by the doctrines of fair use,
21 nominative fair use and/or descriptive use.

22 3. Plaintiff's claims are barred, in whole or in part, because any use of the term
23 "vega" by Nanal was not a trademark use.

24 4. Plaintiff's claims are barred, in whole or in part, because any use of the term
25 "vega" by Nanal was not likely to cause confusion.

26 5. Plaintiff's claims are barred, in whole or in part, because any use of the term
27 "vega" by Nanal was a legitimate use of Plaintiff's mark for comparative advertising purposes
28 and there was no likelihood of confusion with respect to such use.

1 6. Plaintiff's claims are barred, in whole or in part, because any infringement, if any,
2 was innocent.

3 7. Plaintiff's attempt to preclude use of VEGA as a keyword in Google's AdWord
4 program is an unreasonable restraint of trade, anticompetitive, trademark misuse and bad faith
5 trademark enforcement.

6 8. Defendant acted reasonably and in good faith.

7 9. Plaintiff's claims are barred, in whole or in part, by waiver.

8 10. Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show
9 that it will suffer any irreparable harm from Defendant's actions.

10 11. The alleged injury or damage suffered by Plaintiff, if any, would be adequately
11 compensated by damages; Plaintiff, therefore, has a complete and adequate remedy at law and is
12 not entitled to equitable relief.

13 12. Plaintiff's claims are barred, in whole or in part, because Plaintiff was not
14 damaged by any act alleged against Defendant in the Amended Complaint.

15 13. Plaintiff's claims are barred, in whole or in part, because Defendant was not the
16 actual or proximate cause of any damages to Plaintiff.

17 14. Plaintiff's Amended Complaint fails to state facts upon which the claims for
18 exemplary or enhanced damages may be maintained.

19 15. Plaintiff's Amended Complaint fails to state facts upon which the claims for
20 attorneys' fees may be maintained.

21 16. Plaintiff failed to mitigate its damages, if any.

22 17. The Court lacks personal jurisdiction over Nanal under the Washington long-arm
23 statute and Nanal should therefore be awarded its attorneys' fees in defense of this action under
24 RCW 4.28.185.

25 18. Venue is not proper in this District.

26 19. Defendant does not waive and reserves the right to amend this Answer to assert
27 additional defenses and affirmative defenses as discovery progresses in this matter.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Defendant prays as follows:

3 20. That Plaintiff take nothing from Defendant;

4 21. That the Court enter judgment dismissing with prejudice the Amended Complaint
5 and each of its purported causes of action;

6 22. That the Court award Defendant its reasonable expenses and costs of suit,
7 including but not limited to reasonable attorneys' fees; and

8 23. That the Court grant Defendant such other further relief as the Court may deem
9 proper.

10 Dated this 2nd day of December, 2009.

11 Respectfully submitted,

12 HENDRICKS & LEWIS PLLC

13
14 By: s/ Katherine Hendricks
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26
27
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1 **PROOF OF SERVICE**

2 I am employed in the County of King, State of Washington. I am over the age of
3 eighteen years and am not a party to the within action. My business address is Hendricks &
Lewis PLLC, 901 Fifth Avenue, Suite 4100, Seattle, Washington 98164.

4 I hereby certify that on December 2, 2009, I electronically filed the foregoing with the
5 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
6 following CM/ECF participants:

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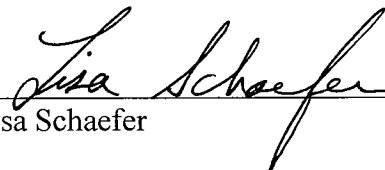
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15 Attorneys for Defendant Google Inc.

16 I declare under penalty of perjury under the laws of the State of Washington that the
17 foregoing is true and correct.

18 Executed December 2, 2009, at Seattle, Washington.

19
20 
21 Lisa Schaefer